IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

COMPANY PETITION No. 259 of 2006.

CONNECTED WITH

COMPANY APPLICATION No. 127 of 2006.

In the matter of Sections 391 read with Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Arrangement between Infomedia India Limited and the Equity Shareholders of Infomedia India Limited.

INFOMEDIA INDIA LIMITD. ... Petitioner.

And

INFOMEDIA INDIA LTD
AND THE EQUITY SHAREHOLDERS
OF INFOMEDIA INDIA LTD. ...Objector.

Shri. Virag Tulzapurkar,Sr.Counsel, with Shri. Janak Dwarkadas, Sr. Counsel and Shri. Rajesh Shah i/b Rajesh Shah & Co for the petitioner.

Shri. S.C. Gupta, Official Liquidator present.

Shri. C.J. Joy with R.C. Master and N.D. Sharma i/b. Dr. T.C. Kaushik for R.D.

Shri. Vinod J. Paymaster - Objectionist
present in person.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 16th June, 2006.

P.C.

1] This petition seeks sanction to a scheme of arrangement between the petitioner company and its shareholders.

2] Power of this Court under Section 391 read with Sections 100 to 103 of the Companies Act, 1956 (for short the "Act") has been invoked by the petitioners to seek sanction of scheme which is annexed as Exh.C.

3] The scheme provides for purchase of equity shares of the petitioner's company from its existing equity share holders. The scheme provides for consequent cancellation of the equity shares so purchased and the reduction of equity share capital of the petitioner company.

4] Clause (4) of the Scheme reads as under;

4.1:- The Company shall, on the

record date, purchase 14% of the Equity Shares held by every share share holder, whether held in physical form or in dematerialized form for a consideration of Rs.245/- per Equity Share.

Any fraction arising on the purchase of the Equity Shares in the proportion mentioned above shall be rounded off to the nearest integer.

In addition to 4.1 above, the Share holders holding 50 (fifty) Equity Shares or less per ledger folio in physical form and/or per Client ID in dematerialized form before giving effect to 4.1 above, on the Record Date, if he/she/it so desires, shall have an option of participating in the Scheme by tendering their entire Equity Shares for purchase by the Company and the Company shall purchase the Equity shares tendered for a consideration of Rs.245/- per

Equity Share. Such shareholders will be sent an option form.

5] By clause (7) the scheme is made conditional upon and subject to the approval of and agreement by the requisite majority of the Members and Creditors of the Company and such other class of persons as this Court directs.

6] By an order passed on 27th January, 2006 in Company Application No. 127 of 2006, this Court ordered that a meeting of the equity share holders of the petitioners be convened and this Court also appointed a Chair Person/Chairman in the order passed to that effect.

7] It is not disputed before me that such a meeting was convened on the date and time as well as at the venue stipulated in the order passed by this Court.

8] The report of the Chairman which is on record shows that the meeting was attended by a number of share holders and after the scheme was explained and certain issues clarified, in clause 14

of the report it is mentioned that the majority in number representing more than 3/4th in value of the equity share holders present and voting have approved the scheme of arrangement. The resolution is also part of the report and placed on record.

9] In pursuance of the aforesaid steps that this petition has been filed.

10] The petition was duly served on the Regional Director and he has filed an affidavit in which it is stated that the scheme has been examined after the same was forwarded with the relevant papers to the concerned Registrar of Companies and his Report is that the scheme is not prejudicial to the interest of Creditors and Shareholders.

11] The Regional Director as well as the Objector appearing in person before me have raised identical objections so far as applicability of Section 77-A of the Act. They urge that Company should be directed to comply with the mandate of this provision.

12] The objector appearing in person, Mr. Vinod J. Paymaster, however, submits that the Company has to abide by Section 77 -A of the Act and

it cannot escape from complying with the mandate of that Section on the ground that petition under Section 391 could be filed with a composite prayer, namely, seeking sanction to the Scheme and to the reduction of the share capital. In his submission, the provisions contained in Section 77 A specifically dealing with issue of" Buy Back", this Court's Jurisdiction under Section 391 of the Companies Act cannot be invoked. He relies upon a principle of Interpretation which is well settled namely that a special provision excludes applicability of general provision.

13] Mr. Tulzapurkar, learned Senior Counsel appearing for the Petitioner has invited my attention to the judgment of a Division Bench of this Court, so far as the first aspect is concerned. In his submission, the Division Bench has considered a identical controversy. The Judgment in the case of SEBI Vs. Sterlite Industries Ltd.[reported in 2003 45 SCL: 475 (Bom) deals with the issue of power of the Company Court to sanction a scheme of the present nature. The argument was that after introduction of Section 77 A of the Companies Act, that is the only mode available for buying back shares and no scheme could be presented under Section 391. That argument

has been expressly rejected and in that behalf he invites my attention to para nos. 20 to 24 of the Judgment which is reported in 2003 SEBI and Corporate Law Report p. 475, Vol.45.

14] Mr. Paymaster submits that assuming the petition under Section 391 is maintainable, the Company has still to comply with provisions of Section 77A. His submission is that the Scheme which is now approved by the other share holders forces share holders like the objector, who are in minority, to part with their share holding at a price or value which is to be solely determined by the Company. His submission is that the price of Rs. 245/- per share which is determined by the Scheme is totally arbitrary and not supported by any valuation report or by any other evidence.That price is very low as compared to the intrinsic value of the share. His further submission is that by the Memorandum of objects and Article of Association,the Company is not authorized to reduce the share capital by buying back or purchasing its own shares. In the absence of any provision in the Memorandum and Article of Assiociations in that behalf the Scheme proposed, cannot be sanctioned by this Court.

15] I have perused the petition as also the Scheme, copy of which is annexed thereto. With the assistance of the learned counsel I have perused the statutory provisions as also the decision brought to my notice.

16] In my view, after the above Division Bench Judgment, it is not open to urge that a petition under Section 391 cannot be instituted seeking sanction to a Scheme of Arrangement between the Company and its share holders providing for purchasing of its own shares or buying back the same. The observations in paras 20 to 24 of the Reported Division Bench decision are a complete answer to all objections in that behalf. No other decision on this point is brought to my notice.

17] In this view of the matter, the first submission of the Objector which is supported in some what different manner by the Regional Director, is required to be rejected.

18] As far as his other contention, namely; absence of power, the same also needs to be rejected. As far as the Memorandum of Objects is concerned, it is true that it would enable Company to carry on

business for fulfilling the objects which are set out therein. The Articles of Association incorporate a specific provision Article 9-A reads thus:

> The Board of Directors may, when and if thought fit, buy back such of the Company's own shares or securities as it may think necesary, subject to such limits, upon such terms and conditions, and subject to such approvals, as may be permitted by the law.

19] The other provision in the Articles which has been brought to my notice pertains to reduction of capital and Article 55 in that behalf reads thus;

> The Company may, from time to time, by Special Resolution reduce its share capital in any way authorised by law and in particular may pay off any paid-up share capital upon the footing that it may be called up again or otherwise and may if and so far as is necessary alter its Memorandum by reducing the

amount of its share capital and of its shares accordingly.

20] A combined reading of this would indicate that there is enough power in the Board to frame a Scheme calling upon the share holders to part with their shares. The Article is worded very widely. All that the Company is required to comply with certain terms and conditions and seek approvals. Obviously, when the Company decides to buy its shares or securities, it can set the limits as also impose terms and conditions. It is required to comply with the provisions of Law. It is not necessary that this means Section 77 A of the Act only. The remedies in that behalf are those which are mentioned in the Division Bench decision.

21] In the present case, it is not for this Court to decide as to whether the decision of the Board to call upon the equity share holders to part with 14% of the equity shares is justified or not. Ultimately, the decision of the Board is placed before the meeting of the shareholders who have approved the scheme as framed. It is not for this Court to suggest as to whether the percentage should be 14% or something else. That the price or

consideration shall be Rs. 245/- is set out in the Scheme. It has been placed for the consideration of the share holders in a meeting convened under the direction of Order of this Court. The shareholders have approved the same.

22] There is much substance in the contention of Shri.Tulzapurkar that the Company has not made any discrimination.It has not treated any share holder favourably or distinctly. All share holders, who are holding equity shares of the petitioner company, are required to part with 14%, whether held in physical form or dematerialized form for the consideration of Rs. 245/- per share.

23] Further, all share holders who are holding less than or fifty equity shares are given an option in addition to the purchase stipulated by clause 4.1. Therefore, it is not, as if the persons who are holding fifty equity shares or less, are in disadvantageous situation. A person holding more than fifty equity shares, so also a person holding less than fifty equity shares are both required to part with 14% of their equity shares. However, in addition if a person with few equity shares does not desire continuing and seeks that remaining shares be also purchased and that he may be given the same

consideration of Rs. 245/-. But that is optional. This is clear from a reading of Clause 4.2 of the Scheme.

24] In these circumstances, it cannot be said that any arbitrary powers are conferred on the Board or that there is a discrimination between equity share holders. All such decisions are not for this Court to scrutinize and examine. Further Mr. Tulzapurkar has clarified, after taking instructions from the petitioner, that the company will not push through and conclude purchase of 14% equity shares before persons who are holding 50 or less shares exercise their option in accordance with clause 4.2. The Company agrees to provide for period of 21 days for the purpose of exercise of option. In my view, this would adequately protect the minority share holders.

25] The consideration for the purchase of the shares has tobe paid in the manner set out in clause 4.3 and needless to state that upon purchase of 14% shares, the payment would be made within 15 days. This period would have to be adhered to by the Company.

26] For the reasons set out herein above as also after perusing the Scheme as a whole, I am not in agreement with Mr. Paymaster that the Company has propounded a one-sided Scheme and applied for this Court's sanction for buying back shares of minority share holders. In the Affidavit filed in this Court on 15th June, 2006, the petitioner Company sets out reasons for determining the price at Rs. 245/- per share. In para 6 of this Affidavit the Deponent states thus:-

> "Further, as regards the contention that the price of Rs. 245/-is very low considering the future prospects of the company, I would like to state that the price is at a premium of 35.17% of the average market price for 6 months ended January 6,2006 i.e.one week before the date of the Board meeting in which the Scheme was approved. I would further like to state that the price is in any case not prejudicial since the ruling market price as on date is in range of Rs.120-130 per equity share."

Therefore, the submission that the price is inadequate or less is rejected.

27] The argument of compulsion cannot be upheld in the light of the fact that majority share holders have approved the scheme. The Company is not discriminating between share holders. It is,therefore, not possible to accept the objection that the scheme is not in the interest of minority share holders.

28] Consequently, the petition is made absolute in terms of prayer clause (a) to (k) However, as far as prayer clause (g) is concerned, it has been rightly pointed out that the Minutes would be submitted after the options are exercised under clause 4.2 as also after the compliance is made with Clause 4.1 read with 4.3 of the Scheme. Therefore liberty is granted to the petitioner to apply for relief in terms of prayer clause (g) at a later stage. Reserving such liberty, petition is made absolute.

29] Costs of Regional Director and O.L.are quantified at Rs.2500/- each.

30] The argument that employees of the Company would not stand to loose and they should also part with 14% of their equity shares cannot be accepted either. First of all, there is no such plea raised on affidavit. In any event, Scheme is between the Company and its equity share holders and without there being any provision for employees, it is accepted by majority. Therefore, as to what should be done with the shares of employees, is not for this Court to decide or provide. The o bjection in that behalf stands rejected.

31] Mr. Paymaster applies for Costs. Costs cannot be granted to the Objector. Ordinarily they are granted to a successful litigant as they follow the event. Therefore, the prayer in that behalf is rejected.

[S.C.DHARMADHIKARI,J]